

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2244 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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U.B. DABHI-

POLICE SUB-INSPECTOR

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

MR GM Joshi for Mr YN OZA for Petitioner

AJ Desai for M/S MG DOSHIT & CO for Respondent No. 1

SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 09/10/96

ORAL JUDGEMENT

The petitioner at the relevant time was working as PSI in Unjha Police Station. The Police Constable, Gopalji Dhulaji, buckle no.558, gave a complaint against the petitioner that under the influence of alcohol the petitioner had beaten the said constable. A preliminary inquiry held in response by CPI, Sidhpur, prima facie established the allegations and therefore the departmental inquiry was decided to be held against the petitioner. The DIG, Gandhinagar, on receipt of the papers, chose to place the petitioner under suspension. The petitioner therefore filed the present petition and thereby obtained the interim relief of staying the operation of the suspension order on 21.3.1985. This order came to be modified on 15.4.1985 and thereby the respondents were permitted to transfer the petitioner in course of service.

2 It may be mentioned here that the petitioner was suspended from 28.11.1993 and continued to be suspended

till 13.2.1985 and as per the prayers contained in para 8(C) the relief came to be granted and that is how position available on 27.11.1983, that is, prior to the suspension order came to be restored by way of interim relief.

3 So far as the departmental inquiry is concerned, the inquiry officer seems to have submitted a report of exonerating the petitioner. As the disciplinary authority - DSP agreed with him and as the suspension order was passed by the DIG, Gandhinagar, for giving effect to the result of inquiry, namely, to set aside suspension and reinstate the petitioner, the papers had to be sent to the DIG.

4 When the papers were received the said authority, the impugned order at Annexure-C to this petition came to be passed whereby, after recording the reasons, the DIG held that the original chargesheet dated 27.10.1983 being defective is set aside and the inquiry thereunder is also set aside. He thereafter directed the DSP to issue a fresh chargesheet according to the prevalent rules and before it was served on the petitioner the DSP was directed to send the chargesheet for the approval of the DIG. After the chargesheet thus got approved the disciplinary authority was required to go ahead with the inquiry. On completion of the inquiry it was further directed that the DSP should indicate to the DIG and also intimate him of the result of the inquiry. There is also an indication in the impugned order at page 21 that on completion of the inquiry the final report be sent to the DIG for final disposal.

5 It is obvious that the DIG has no authority whatsoever to issue a direction on receiving the result of the inquiry so that he can finally dispose of the inquiry himself. Under the Discipline and Appeal Rules if the disciplinary authority is the DSP, it is his duty to end the enquiry one way or the other. The DIG may have supervisory jurisdiction or jurisdiction of any other nature including the appellate jurisdiction but thereby he cannot assume the powers of the DSP who is the disciplinary authority to forward the result of the inquiry for it being finally concluded by the DIG.

6 As noted above, the said impugned order at Annexure-C, page no.18, notes that the inquiry has held the petitioner not guilty and that finding on being communicated to the DSP, he, as the disciplinary authority, agreed with the same. When this decision was

communicated to the DIG the inquiry file was called for by the DIG and the impugned order was result thereof.

7 If at all there be any power with the DIG, it is the one as set out in Section 27A of the Bombay Police Act. However, that power is restricted to confirm, modify or reverse any order and likewise, the change in the penalty is set out in clause (b) of Section 27A and as per clause (c) the DIG may direct further inquiry to be held.

8 No doubt, clause (d) provides power of general nature as may be warranted in the circumstances of the case but that has to be used in the light of the preceding provisions.

9 Instead of ordering further inquiry, at best the DIG could have acted under section 27 of the Act if at all he wanted to do so. When he proceeded instead, to set at naught the whole proceeding and order a fresh inquiry, obviously, he has exceeded his authority.

10 The grievance made in the petition therefore against the impugned order dated 22.10.1984 is obviously justified. As a consequence to that order, the chargesheet that came to be issued afresh on 13.2.1985 also cannot be sustained .

In the result, the petition succeeds. The impugned order is quashed and set aside. So is the chargesheet dated 13.2.1985. Rule is made absolute accordingly.

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